

## I. The White Paper

**Cooperative Agreements between State Vocational Rehabilitation  
Agencies and Institutions for Higher Education:  
Responsibility for Funding Auxiliary Aids  
-A White Paper-**

**Introduction**

The legal and moral debate over funding responsibility for reasonable accommodations and auxiliary aids in Institutions of Higher Education (IHE) continues as a primary bargaining point in the development of cooperative agreements with state vocational rehabilitation agencies. Stringent fiscal policies, diminishing tax reserves, historic case law and conflicting federal mandate interpretations have VR agencies and IHE's determined to protect scarce resources.

This White Paper reflects on the requirements in the 1998 Amendment to the Rehabilitation Act of 1973 as related to cooperative agreements between State Vocational Rehabilitation agencies and public Institutions of Higher Education (IHE). State implementation of the agreement provisions in the Act lead to more immediate access to necessary services, including interpreters and other access for persons who are deaf, deaf-blind or hard of hearing and who seek to participate in higher education programs

A national search was initiated seeking various methods of developing cooperative agreements. The authors of this paper recognize that the contents, and context, of any single agreement may be inappropriate for some states. The "best practice" of one state may be beneficial for some but not for others. While our respective agreements are based on legal opinions, laws governing the funding of expensive auxiliary aids in IHE's encourage a profusion of interpretations by affected VR and IHE agencies.

**Positions**

State Vocational Rehabilitation agencies have frequently taken the position that Institutions of Higher Education are mandated by federal law to provide, and fund, all auxiliary aids and reasonable accommodations. Institutions of Higher Education state that federal laws require vocational rehabilitation, or the Designated State Unit, to provide interpreter services, for deaf individuals, and reader services for those individuals determined to be blind. Designated State Units made decisions based on a number of legal statements. These were derived primarily from the Americans with Disabilities Act and the Rehabilitation Act of 1973 (as amended). The IHE's maintain that the law intended that taxpayers provide funding for auxiliary aids through vocational rehabilitation agencies because society as a whole benefits from educated, trained and employed people who have disabilities.

### **Designated State Units/Rehabilitation Agencies**

The **Alaska Division of Vocational Rehabilitation** was among the first agencies to terminate funding of interpreter services for deaf VR consumers. This action was based on stipulations in Title II of the Americans with Disabilities Act and reads as follows in 28 CFR S 33.160:

"Public institutions of higher education are required to furnish appropriate auxiliary aids and services, including qualified interpreters, when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the institution."

Following passage of the Rehabilitation Act Amendments of 1998, the **Oklahoma Department of Rehabilitation Services** concluded that public and private Institutions of Higher Education had a mandated responsibility for the provision of auxiliary aids and services to all students with disabilities. Auxiliary aids and services were expected to be provided and funded by the Institution of Higher Education regardless of whether a student was also a client of the Oklahoma Department of Rehabilitation Services (DRS). Oklahoma maintains that "The Rehabilitation Act does not include language that requires DRS to pay for the compliance obligations of public or private vendors" such as public and private IHE's.

Oklahoma DRS further states that "existing sections of the Rehabilitation Act of 1973 establish the overall requirement that rehabilitation agencies maximize federal dollars by seeking other available benefits and services before spending federal funds." All state vocational rehabilitation agencies must consider *comparable benefits* prior to expenditure of case services dollars. This is further stipulated in 34 CFR 361.53

The Rehabilitation Act Amendments of 1998 explicitly outlined what services provided by other entities are regarded as comparable benefits. The Rehabilitation Act of 1973 requires IHE's that receive federal funding to make their programs accessible through the provision of appropriate auxiliary aids. Regulations implementing Title II of the Act further state:

A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the public entity.

Public entities such as Institutions for Higher Education must comply with mandates requiring the provision of auxiliary aids and services for persons with disabilities. *VR agencies are mandated to regard those provisions as comparable benefits.* Oklahoma determined that the comparable benefits sections of the 1998 amendments clarify Congressional expectations that IHE's must comply and meet their responsibilities as stipulated in the Americans with Disabilities Act and the 1998 Amendments to the Rehabilitation Act of 1973. It is further noted that 34 CFR 361.53 states:

- (a) Determination of availability. The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in Sec. 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—
  - (1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;
  - (2) An immediate job placement; or
  - (3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

Institutions for Higher Education use the caselaw in the Jones vs. IDRS, 689 F. 2d 724 (7<sup>th</sup> Cir. 1982), a 1982 federal district court decision, as the legal rationale for their position. This case held that when IHE's and vocational rehabilitation agencies shared responsibility for the provision of auxiliary aids, vocational rehabilitation agencies had the primary responsibility to provide, and fund, the service.

The 1988 regulations implementing Section 504 of the Rehabilitation Act, the Americans with Disabilities Act of 1990 and implementing regulations, as well as the provisions of the Rehabilitation Act Amendments of 1998, all contain language suggesting Institutions of Higher Education have responsibility for the provision of auxiliary aids and some states have interpreted the 1998 amendments to reverse, nullify, or make unapplicable the 1982 Jones decision.

The **State of Wisconsin Division of Vocational Rehabilitation** uses 34 CFR 361.53 as the legal basis for gradually withdrawing funding from IHE's for the provision of auxiliary aids. Wisconsin's legal opinion of June 2002 concerning the continuing influence of the case of Jones v. IDRS, 689 F. 2d 724 (7<sup>th</sup> Cir. 1982), which states that the state vocational rehabilitation agency bears the primary responsibility for auxiliary aids, is that this decision was based on the former federal regulations and their distinct history and commentary. The opinion then adds that the rationale of that decision does not apply to the amended regulations and the 1998 amendments.

Last July 2002 the **Arkansas Rehabilitation Services (ARS)** requested a legal opinion on several issues concerning the funding and delivery of auxiliary aids and services. The Arkansas Attorney General Mark Pryor agreed that public and private Institutions of Higher Education are responsible for "providing qualified students with auxiliary aids and services" as defined by law. Attorney General Pryor further states that ARS is the "Designated State Unit" within the meaning of the Rehabilitation Act of 1973 (as amended). As the Designated State Unit, the Arkansas Rehabilitation Services is required pay for auxiliary aids and services when the IHE's fail to fulfill their compliance obligations. *However, ARS is entitled to receive reimbursement from those institutions.* This is indicated in 29 USC 721(a)(8)(C)(ii) of the Rehabilitation Act of 1973 (as amended):

*If a public entity other than the Designated State Unit fails to provide or pay for the services described in clause ( i ) for an eligible individual, the Designated State Unit shall provide or pay for such services to the individual. Such Designated State Unit may claim reimbursement for the services from the public entity that failed to provide or pay for such services.*

Arkansas must insure their consumers are provided with needed auxiliary aids and services and pay for these if necessary. The IHE must reimburse ARS for expenses emanating from these purchased services.

#### **Institutions of Higher Education**

The Association of Higher Education and Disability (AHEAD) takes the position stated by Attorney General Janet Reno in a letter dated July 20, 1995, that the vocational rehabilitation (VR) agencies are the primary source of funding for auxiliary aids and services at Institutions of Higher Education. AHEAD feels that vocational rehabilitation agencies are responsible to assist persons with disabilities in getting the education, services and skills needed to enter, or reenter, the workforce.

AHEAD has posted this position on the Post Secondary Education Programs Network web site ([http://www.pepnet.org/ahead\\_update.asp](http://www.pepnet.org/ahead_update.asp)). The Association of Higher Education and Disability believes that "the cornerstone of the Rehabilitation Act is respect for individual dignity and promotion of inclusion, integration and full participation of the individual to increase employment, independence and self-sufficiency of persons with disabilities."

AHEAD uses the Rehabilitation Act, as "the premise that since society as a whole benefits from the education of persons with disabilities, government, on behalf of all citizens, should pay the extra costs required to educate those students who cannot benefit from a standard academic environment alone. The most equitable way to do this is through the broadest, most progressive taxes possible, e.g.: federal and state dollars" - not the ranks of tuition paying students, whose base by definition constitutes the most regressive method of funding."

Since society as a whole benefits from the education and training of persons with disabilities, funding for auxiliary aids and services should be paid with taxes from all citizens. Auxiliary aids should be funded by VR agencies that were created with federal and states taxes and are the instruments used to pay for these services.

AHEAD believes "that should postsecondary institutions come to bear the full financial burden of communications access, deaf and hard of hearing students will de facto be denied equal access to higher education because institutions will view them as "too expensive." AHEAD cannot endorse any position, however philosophically attractive, that may lead to deaf and hard of hearing students being ostracized at institutions of postsecondary education."

Institutions of Higher Education may feel that VR agencies may be taking some law out of context as they govern interagency agreements between Designated State Units and Institutions of Higher Education. Specifically, section 101(a)(8)(B) of the 1998 Amendment to the Rehabilitation Act of 1973 requires that "an interagency agreement or other mechanism for interagency coordination takes effect between . . . a public institution of higher education, . . . and the designated State unit [administering the State's VR program], in order to ensure the provision of vocational rehabilitation services [to an eligible individual]." In other words, this required interagency agreement is to provide a means for the VR agency and the IHE to together decide how to provide or pay for necessary services, such as interpreter or other communication supports, to which each party is authorized to contribute. The Act in section 101(a)(8) also requires, *that any mechanism used to fulfill the interagency coordination requirements, identify the financial responsibility of each party, as well as procedures for facilitating services, resolving disagreements between the parties, and coordinating the parties' responsibilities.*

### **Cooperative Agreements**

Vocational Rehabilitation agencies were surveyed and a copy of their cooperative agreement with Institutions of Higher Education were requested. While 41 states responded to the survey, 14 of these also sent a copy of their agreement. The National Technical Institute for the Deaf also included its agreement. A summary of these responses is attached for your review. Complete copies of cooperative agreements from the following states are also attached:

Colorado	Minnesota	Oregon	Virginia
Illinois	Nebraska (letter)	South Carolina	Wisconsin
Maine	North Carolina	Texas	
Michigan	NTID	Vermont	

State VR agencies were contacted through the RSA-SCD List Serve. Each state was asked to mention which of the following four categories was reflective of their cooperative agreement with Institutions of Higher Education. The categories and responses are as follows:

- 1. IHE's are fully responsible for the payment of auxiliary aids and access services and the VR agency is no longer funding these costs.**  
17 States
- 2. IHE's are fully responsible for payment of auxiliary aids and access services and the VR agency has a transition strategy to move towards 100% IHE responsibility, but is still engaged in providing some financial support.**  
2 States
- 3. IHE's and VR agencies have "shared responsibility and an agreement or practice that reflects on-going commitment to contributions to the costs of auxiliary aids and access services.**  
14 States
- 4. VR agencies provide 100% of the funding for auxiliary aids and access services for VR consumers.**  
10 States

\*New Jersey has separate agreements that reflect two different categories. A summary of each state's response is attached.

**Concluding Summary**

Institutions of Higher Education and VR agencies make strong arguments supporting their positions. Nationally, cooperative agreements between VR agencies and IHE's vary in their approach and responsibilities. Both VR and IHE's rely on the same legislation to support their respective positions regarding funding responsibility for expensive auxiliary aids such as interpreter and CART services.

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